

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

LINDA CONSTANTE,)	
)	
Plaintiff,)	
)	
VS.)	Civil Action No: SA-12-CV-757-XR
)	
GENERAL MOTORS, LLC,)	
)	
Defendant.)	

ORDER

On this date, the Court considered Defendant General Motors, LLC's Motion for Leave to Designate Responsible Third Parties (Doc. No. 20). The motion seeks to designate Silvino Gonzales, Jr. and Julie Brandt as responsible third parties. After careful consideration, the Court will grant the motion.

Facts and Analysis

This lawsuit arises out of a vehicle accident that occurred on April 15, 2012 in Medina County, Texas. Plaintiff Linda Constante was the front-right passenger in the vehicle and sustained serious injuries. Plaintiff filed this action against Defendant General Motors, LLC asserting that the vehicle was unreasonably dangerous as designed, manufactured, assembled, marketed, and/or tested. Plaintiff seeks economic and non-economic damages.

Under section 33.011 of the Texas Civil Practice and Remedies Code, a "responsible third party" means any person who is alleged to have caused or contributed to causing in any way the harm for which recovery of damages is sought, whether by negligent act or omission, by any defective or unreasonably dangerous product, by other conduct or activity that violates an applicable legal

standard, or by any combination of these. It is undisputed that Silvino Gonzales, Jr. was driving the vehicle at the time of the accident. Defendant argues that Silvino Gonzales, Jr.'s negligence resulted in Plaintiff's injuries because he was negligently operating the vehicle, was driving while under the influence of alcohol and cocaine, and was driving far in excess of the posted speed limit. Defendant contends that Julie Brandt was the vehicle's owner and that her entrustment of the vehicle to Silvino Gonzales, Jr. was a cause of the accident. Accordingly, Defendant seeks to designate Silvino Gonzales, Jr. and Julie Brandt as responsible third parties.

Texas Civil Practice and Remedies Code section 33.004 provides, in relevant part:

(a) A defendant may seek to designate a person as a responsible third party by filing a motion for leave to designate that person as a responsible third party. The motion must be filed on or before the 60th day before the trial date unless the court finds good cause to allow the motion to be filed at a later date.

....

(f) A court shall grant leave to designate the named person as a responsible third party unless another party files an objection to the motion for leave on or before the 15th day after the date the motion is served.

....

(i) The filing or granting of a motion for leave to designate a person as a responsible third party or a finding of fault against the person:

- (1) does not by itself impose liability on the person; and
- (2) may not be used in any other proceeding, on the basis of res judicata, collateral estoppel, or any other legal theory, to impose liability on the person.

TEX. CIV. PRAC. & REM. CODE § 33.004.

Defendant has timely filed its motion for leave to designate responsible third parties under the statute and the Court's scheduling order. Since no objections to the motion were filed within 15 days of the motion being filed and electronically served on Plaintiff's counsel, the Court must grant the motion pursuant to section 33.004(f). The Court also notes that the motion may be granted as

unopposed pursuant to Local Rule CV-7 because no timely response to the motion was filed. Furthermore, pursuant to section 33.004(h), by granting a motion for leave to designate a person as a responsible third party, the person is designated as a responsible third party for purposes of chapter 33 (including submission to the jury under section 33.003¹) without further action by the court or any party.²

Section 33.004(l) provides that, “[a]fter adequate time for discovery, a party may move to strike the designation of a responsible third party on the ground that there is no evidence that the designated person is responsible for any portion of the claimant’s alleged injury or damage. The court shall grant the motion to strike unless a defendant produces sufficient evidence to raise a genuine issue of fact regarding the designated person’s responsibility for the claimant’s injury or damage.” Should Plaintiff desire to file a motion under section 33.004(l), such a motion must be filed no later than the deadline for filing dispositive motions in the scheduling order.

Conclusion

Defendant’s Motion for Leave to Designate Responsible Third Parties (Doc. No. 20) is GRANTED. Silvino Gonzales, Jr. and Julie Brandt are hereby designated as responsible third parties.

It is so ORDERED.

¹ However, section 33.003 does not allow a submission to the jury of a question regarding conduct by any person without sufficient evidence to support the submission.

² Before the 2003 amendments to section 33.004, responsible third parties were joined as parties to the suit. However, since the 2003 amendments, responsible third parties are designated, not joined.

SIGNED this 22nd day of April, 2013.

A handwritten signature in black ink, appearing to read 'Xavier Rodriguez', is written over a horizontal line.

XAVIER RODRIGUEZ
UNITED STATES DISTRICT JUDGE